Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of	)	
	)	
Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996	)	CC Docket No. 94-129
	)	
Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers	)	
	)	
and	)	
	)	
Implementation of the Telecommunications Act Of 1996:	)	CC Docket No. 96-115
	)	
Telecommunications Carriers' User of Customer Proprietary Network Information and Other Customer Information	)	

PETITION FOR DECLARATORY RULING
OF FRONTIER COMMUNICATIONS CORPORATION

Pursuant to Section 1.2 of the Commission's rules, Frontier Communications Corporation ("Frontier") hereby requests that the Commission issue a declaratory ruling regarding permitted communication between a carrier and its subscriber during a three-way conference call to lift a preferred carrier freeze, applying the Commission's rules and orders governing preferred carrier freezes and Customer Proprietary Network Information ("CPNI").

BACKGROUND

Section 64.1190(e) of the Commission's Rules. A preferred carrier freeze "prevents a change in a subscriber's preferred carrier selection unless the subscriber gives the carrier from

whom the freeze was requested his or her express consent."[1] The Commission has recognized the value of preferred carrier freezes as "many consumers wish to utilize preferred carrier freezes as an additional level of protection against slamming."[2] In fact, the Commission's own website lists the preferred carrier freeze as a consumer method of preventing slamming.[3] Section 64.1190(e) of the Commission's Rules sets forth the procedures for lifting preferred carrier freezes, including use of a three-way conference call between the submitting carrier, the carrier administering the freeze, and the subscriber.[4] During an oral authorization in a three-way call the rule requires the carrier administering the freeze to "confirm appropriate verification data (*e.g.*, the subscriber's date of birth or social security number) and the subscriber's intent to lift the particular freeze."[5] When the Commission adopted this rule in 1998 it made clear that a local exchange carrier ("LEC") receiving a request to lift a preferred carrier freeze must "act in a

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1 47 C.F.R. § 64.1190(a).

2 *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, ¶ 114 (1998). *See also id.* ("The record demonstrates that LECs increasingly have made available preferred carrier freezes to their customers as a means of preventing unauthorized conversion of carrier selections. The Commission, in the past, has supported the use of preferred carrier freezes as a means of ensuring that a subscriber's preferred carrier selection is not changed without his or her consent. Indeed, the majority of commenters in this proceeding assert that the use of preferred carrier freezes can reduce slamming by giving customers greater control over their accounts. Our experience, thus far, has demonstrated that preventing unauthorized carrier changes enhances competition by fostering consumer confidence that they control their choice of service providers. Thus, we believe that it is reasonable for carriers to offer, at their discretion, preferred carrier freeze mechanisms that will enable subscribers to gain greater control over their carrier selection.").

3 FCC.gov, FCC Encyclopedia: Slamming, http://www.fcc.gov/encyclopedia/slamming (last visited Mar. 28, 2013) ("You can ask your local telephone company to place a "freeze" on your account to keep anyone other than you from changing your authorized telephone company selection. After placing a freeze, you must give your local telephone company written or verbal authorization to remove the freeze and change your authorized telephone company.").

4 47 C.F.R. § 64.1190(e).

5 47 C.F.R. § 64.1190(e)(2).

neutral and nondiscriminatory manner" and that it expects the administering carrier to ask questions during the three-way call that are "necessary to ascertain the identity of the caller and the caller's intention to lift her or his freeze, such as the caller's social security number or date of birth."[6] Although carriers administering freezes are expected to confirm the subscriber's intention, the Commission also noted that carriers using the "opportunity with the customer to advantage themselves competitively, for example, through marketing" would likely violate the Commission's rules.[7]

Section 222(b) of the Communications Act. Section 222(b) of the Communications Act ("Act") provides that "[a] telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts."[8] The Commission has also held that if a customer initiates contact with the its carrier, the "carrier-change information conveyed by the customer to … [the carrier] is not 'proprietary' within the meaning of section 222(b) and may be used to engage in retention marketing."[9]

DISCUSSION

Frontier seeks a declaratory ruling regarding permissible communication by the carrier administering the freeze to its subscriber during a three-way conference call that involves another carrier submitting a request to lift the freeze so the subscriber can be ported away.

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6 Second Report and Order at ¶ 132.

7 *Id*.

8 47 U.S.C. § 222(b).

9 *Bright House Networks, LLC, et al., Complainants, v. Verizon California, Inc., et al., Defendants*, Memorandum Opinion and Order, 23 FCC Rcd 10704, ¶ 16 (2008) ("Bright House Order").

Specifically, Frontier seeks a ruling clarifying that, where an early termination fee (ETF) would apply under Frontier's contract with the subscriber if the subscriber disconnects service with Frontier, nothing in the Communications Act or the Commission's rules prohibits Frontier, as the administering carrier, from informing its subscriber during the three-way call about such ETF.

Notice of early termination liability is a permissible communication in a three-way call to lift a preferred carrier freeze. The Commission expects, and in fact requires, the carrier administering the preferred carrier freeze to communicate with its subscriber during a three-way conference call to lift the freeze by asking questions that will enable it to ascertain the "*caller's intention* to lift her or his freeze."[10] Intention is defined as "a determination to act in a certain way."[11] The Commission does not elaborate on what types of questions the administering carrier may ask in ascertaining the caller's intention to lift the preferred carrier freeze, but a factor that administering carriers can reasonably expect would be important to their subscriber in this circumstance is information about any contract liability that would apply in the event the subscriber terminates service with his or her existing carrier. In addition to simply asking the subscriber whether he or she wants to lift the freeze, administering carriers should be permitted to confirm that the subscriber is aware of ETFs that would result (where applicable) if the subscriber's service is ported after the freeze is lifted.[12] Practically, the administering carrier wants to make the subscriber aware of such ETFs so that the subscriber's porting decision is an

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[10] Second Report and Order, ¶ 132 (emphasis added). The caller is the subscriber, not the carrier submitting freeze lift in preparation to port the subscriber.

[11] *See* Merriam-Webster online dictionary: http://www.merriam-webster.com/dictionary/intention.

[12] The Commission's rule addressing three-way conference calls to lift a preferred carrier freeze assume porting of service will follow the lifting of the freeze simply by the very purpose of the preferred carrier freeze, which is to "prevent a change in a subscriber's preferred carrier selection unless the subscriber gives the carrier from whom the freeze was requested his or her express consent." 47 C.F.R. § 1190(a).

informed decision, but also so that the administering carrier's assessment of the subscriber's intention is based on the subscriber being fully informed about termination liability. This notification would minimize the risk to the administering carrier of a subsequent dispute with the subscriber about termination liability following the porting of the subscriber's service to another carrier.

Confirmation by the administering carrier about the subscriber's awareness of his or her early termination liability may be made by asking the subscriber if he or she is aware of the ETF in the contract (where applicable), or by specifically noting that an ETF would be incurred if the subscriber ports his or her service after the freeze is lifted. Frontier seeks a ruling that either form of communication with its subscriber during a three-way call to lift a freeze, whether by questioning the subscriber or by notifying the subscriber in this manner, would be permissible.

Carrier-change information voluntarily provided by a subscriber is not proprietary customer information and notification of early termination charges during a call to lift a freeze is not "retention marketing." The Commission has found that a three-way conference call to lift a subscriber freeze represents "direct contact between the [administering] LEC and the subscriber."[13] Importantly, the Commission treats this communication to the administering carrier as made *by the subscriber* even though the call may be initiated by another carrier (*i.e.*, the submitting carrier). The Commission notes the purpose of the three-way call is "so that the consumer can personally request that a particular freeze be lifted."[14] The Commission has found that when a subscriber makes contact with its service provider for the purpose of conveying its intent to switch service to another provider, which is analogous to a three-way conference call to lift a freeze, the carrier change information conveyed by the subscriber during this call *is not*

13 Second Report and Order, ¶ 129.

14 *Id*.

proprietary within the meaning of Section 222(b) of the Act.[15] The same should be found for a three-way call to lift a preferred provider freeze. Moreover, when an administering carrier notifies the subscriber about ETFs during a three-way conference to lift a freeze, the subscriber has already voluntarily provided notice of intent to change carriers by virtue of the call from the subscriber and the submitting carrier. Therefore, advising a subscriber in this situation of his or her potential termination liability is also not retention marketing. Instead, advising the customer of potential ETF liability provides a service to the customer by informing him or her of his or her contractual obligations. The alternative of simply remaining silent and leaving the customer to discover an already-billed ETF in the future cannot be considered better for individual customer or the public interest.

A declaratory ruling is necessary. The Commission has partly addressed the application of its rules and orders to the scenario presented by Frontier. Specifically, administering carriers must ascertain the intent of the subscriber to lift a freeze; carrier-change information voluntarily provided by a subscriber in a call initiated by the subscriber and it porting carrier is not proprietary information; and administering carriers may conduct retention marketing when a

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[15] *See* Bright House Order, ¶ 16. "It is true that a Verizon retail customer has every right to contact Verizon directly to state that she intends to switch to a Complainant's voice service. Indeed, the Commission has already recognized that truth and held that, if a customer makes such a contact, the carrier-change information conveyed by the customer to Verizon is not "proprietary" within the meaning of section 222(b) and may be used to engage in retention marketing." *Id*. *See also Telecommunications Carriers' User of Customer Proprietary Network Information and Other Customer Information*, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409, ¶ 79 (1999) (holding that "section 222(b) is not violated if the carrier has independently learned from its retail operation that a customer is switching to another carrier") and *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd 14860, ¶ 131 and n. 302 (2002) (recognizing that "a carrier's retail operations may, without using information obtained in violation of section 222(b), legitimately obtain notice that a customer plans to switch to another carrier," but noting that "such instances are the exception, not the rule").

subscriber initiates communication with its service provider about changing service. Frontier simply seeks confirmation that it may notify its subscriber about applicable ETFs that would apply under the customer's contract with Frontier if the subscriber ports to the submitting carrier after lifting the freeze. This communication is reasonably part of ascertaining the subscriber's intent to lift the freeze and change service providers. Even if the subscriber decides not to lift the freeze and port its service to the submitting carrier after being notified about potential termination liability, the communication about potential termination liability does not rise to the level of being a retention marketing effort, even though such an effort would conceivably be permitted under the Commission's rules and orders.

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For the reasons set forth above, the Commission should issue a declaratory ruling finding that (i) Frontier may notify its subscriber during a three-way conference call to lift a preferred carrier freeze about any contract termination charges that would apply if it ported its service, consistent with the requirement that carriers administering preferred carrier freezes ascertain their subscriber's intent to lift a freeze; (ii) the subscriber's communication to Frontier about lifting the freeze on its service and porting its service is not proprietary information because the subscriber initiated contact with Frontier through a three-way conference call and voluntarily provided the information; and (iii) Frontier's notification to the subscriber of potential termination liability in the event of lifting the freeze and porting service is not retention marketing and not in violation of Section 222(b) of the Act.

Respectfully submitted,

/s/

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